

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7349

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LEWIS GENERAL TIRES, INC.,
Plaintiff-Intervenor,

-vs-

DONALD E. LEWIS,
Defendant.

DONALD E. LEWIS,
Plaintiff,

-vs-

S. L. & E. INC., a corporation
LEON E. LEWIS, SR.
ALAN E. LEWIS
LEON E. LEWIS, JR.
RICHARD E. LEWIS, SR.
Defendants.

JOINT APPENDIX

Kaufman, Kenning, Tyle, Pauley,
Baker & D'Amanda
1008 Times Square Building
45 Exchange Street
Rochester, New York 14614

B
p/s

PAGINATION AS IN ORIGINAL COPY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DONALD E. LEWIS,

Plaintiff,

-vs-

S. L. & E. Inc., et al.

Defendants.

NOTICE OF APPEAL

CIV. 1973-396

LEWIS GENERAL TIRES, INC.

Plaintiff-Intervenor,

-vs-

DONALD E. LEWIS,

Defendant.

S I R S:

NOTICE is hereby given that S. L. & E. Inc., Lincoln First Bank of Rochester, as Executor u/w Leon E. Lewis, Sr., Alan E. Lewis, Richard E. Lewis, Sr., as defendants, and Lewis General Tires, Inc., as plaintiff-intervenor, hereby appeal to the United States Court of Appeals, Second Circuit, from an Order of the Hon. Harold P. Burke, United States District Court Judge, Western District of New York, dated June 6th, 1975, and entered in the office of the United States District Court, Western District of New York, on the 9th day of June, 1975.

Dated: June 23rd, 1975.

(Charles B. Kenning)

KAUFMAN, KENNING, TYLE, PAULEY,
BAKER & D'AMANDA

Attorneys for defendants S. L. & E. Inc.,
Lincoln First Bank of Rochester, Executor
u/w Leon E. Lewis, Sr., Alan E. Lewis,
Richard E. Lewis, Sr. and Lewis General
Tires, Inc., plaintiff-intervenor
Office & P. O. Address
1008 Times Square Building
Rochester, New York 14614

KAUFMAN, KENNING, TYLE,
PAULEY, BAKER & D'AMANDA
ATTORNEYS AT LAW
45 EXCHANGE STREET
ROCHESTER, NEW YORK

14614

TO:

SHELDON P. WEITZMAN, ESQ.
Attorney for plaintiff, Donald E. Lewis
and defendant, Donald E. Lewis
Office & P.O. Address
502 Lincoln Bldg.
Cleveland, Ohio 44114

TO:

WALLACE F. ASHNAULT, ESQ.
Attorney for defendant, Leon E. Lewis, Jr.
Office & P.O. Address
100 Times Square Bldg.,
Rochester, New York 14614

TO:

MONDO & MONDO
Attorneys for Donald E. Lewis, as defendant
Office & P.O. Address
100 Times Square Bldg.,
Rochester, New York 14614

KAUFMAN, KENNING, TYLE,
PAULEY, BAKER & D'AMANDA
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LEWIS GENERAL TIRES, INC.,
Plaintiff-Intervenor,

-VS-

DONALD E. LEWIS,

Defendant.

Court of Appeals
Docket #75-7349

DONALD E. LEWIS,

Plaintiff,

United States District
Court
Docket #Civ.1973-396

-VS-

S. L. & E. INC., a corporation
LEON E. LEWIS, SR.
ALAN E. LEWIS
LEON E. LEWIS, JR.
RICHARD E. LEWIS, SR.

Defendants.

The appeal herein is limited to the Decision of the Hon. Harold P. Burke, dated June 6th, 1975, and Order of June 9th, 1975, wherein the Hon. Harold P. Burke denied the Cross-Motion of the defendants and of Lewis General Tires, Inc. as Plaintiff-Intervenor, to stay all further proceedings by the plaintiff, Donald E. Lewis, until such time as the issues in dispute between and among all parties hereto, are submitted to binding arbitration pursuant to the Stockholders Agreement of June 25th, 1962, and due demand to submit all issues to arbitration.

The Decision of the Hon. Harold P. Burke, United States District Judge, in so far as it required the appearance of Richard E. Lewis, Sr. to appear at the offices of Wickins, Ashnault, Schaefer & Maloy, 100 Times Square Bldg., Rochester, New York, at 1:00 o'clock P.M. on June 27th, 1975,

was duly complied with by Richard E. Lewis, Sr. and the oral deposition of Richard E. Lewis, Sr. was duly taken by Sheldon P. Weitzman, Esq. in accordance with the provisions of the Order of the Hon. Harold P. Burke.

Copies of the following are attached hereto for the purpose of this appeal, and inserted as part of the Joint Appendix:

1. Order of the Hon. Harold P. Burke dated June 6th, 1975 and filed June 9th, 1975. No. 15 on Index for Record.
2. Notice of Appeal dated June 23rd, 1975 and filed June 25th, 1975. No. 16 on Index for Record.
3. Reply Affidavit and Notice of Cross-Motion filed March 10th, 1975. No. 13 on Index for Record.
4. Objections to defendants and Plaintiff-Intervenor's Cross-Motion filed March 10th, 1975. No. 14 on Index for Record.

7/15/75

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

DONALD E. LEWIS,

Plaintiff-Appellee,

Court of Appeals
Docket #75-7349

-VS-

S. L. & E. INC.,
LEON E. LEWIS, SR.,
ALAN E. LEWIS,
LEON E. LEWIS, JR.,
RICHARD E. LEWIS, SR.,

United States District
Court
Docket #Civ. 1973-396

Defendants-Appellants.

LEWIS GENERAL TIRES, INC.,
Plaintiff-Intervenor,

-VS-

DONALD E. LEWIS,

Defendant.

INDEX FOR RECORD

- | | |
|--|----------------------------|
| 1. ORIGINAL COMPLAINT | Filed: August 6th, 1973 |
| 2. ANSWER AND DEFENDANT'S
COUNTERCLAIMS: | Filed: August 30th, 1973 |
| 3. DEFENDANTS' INTERROGATORIES: | Filed: August 30th, 1973 |
| 4. REPLY TO COUNTERCLAIMS: | Filed: Sept. 24th, 1973 |
| 5. MOTION FOR ORDER OF LEWIS
GENERAL TIRES, INC. TO INTERVENE
AND TO ANSWER INTERROGATORIES: | Filed: October 24th, 1973 |
| 6. ANSWERS TO INTERROGATORIES: | Filed: November 12th, 1973 |

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PAULEY, BAKER & D'AMANDA
ATTORNEYS AT LAW
45 EXCHANGE STREET
ROCHESTER, NEW YORK

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7. OBJECTIONS TO DEFENDANTS' MOTION TO DISMISS: Filed: Dec. 8th, 1973
8. ORDER PERMITTING LEWIS GENERAL TIRES, INC. TO INTERVENE: Filed: March 8th, 1974
9. COMPLAINT AND EXHIBITS OF LEWIS GENERAL TIRES, INC. AS INTERVENOR: Filed: Sept. 14th, 1974
10. ANSWERING AFFIDAVIT: Filed: Sept. 20th, 1974
11. ANSWER OF DEFENDANT, DONALD E. LEWIS TO COMPLAINT OF LEWIS GENERAL TIRES, INC. AS INTERVENOR: Filed: Sept. 27th, 1974
12. NOTICE OF MOTION TO STRIKE ANSWER: Filed: Feb. 21st, 1974
13. REPLY AFFIDAVIT AND NOTICE OF CROSS-MOTION: Filed: March 10th, 1975
14. OBJECTIONS TO DEFENDANTS AND PLAINTIFF-INTERVENOR'S CROSS-MOTION: Filed: March 10th, 1975
15. ORDER OF HON. HAROLD P. BURKE DATED JUNE 6th, 1975: Filed: June 9th, 1975
16. NOTICE OF APPEAL DATED JUNE 23rd, 1975: Filed: June 25th, 1975

DATED: July 15th, 1975.

Respectfully submitted,

Charles B. Kenning, Esq.
KAUFMAN, KENNING, TYLE, PAULEY,
BAKER & D'AMANDA
Attorneys for Defendants-Appellants
S. L. & E. Inc., Lincoln First Bank of
Rochester, Executor u/w Leon E.
Lewis, Sr., Alan E. Lewis, Richard E.
Lewis, Sr. and Lewis General Tires, Inc.
Plaintiff-Intervenor
Office & P.O. Address
1008 Times Square Building
Rochester, New York (14614)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DONALD E. LEWIS,

Plaintiff

- vs -

CIVIL 1973-396

S. L. & E. INC., et al.,

Defendants

LEWIS GENERAL TIRES, INC.,

Plaintiff-Intervenor

- vs -

DONALD E. LEWIS,

Defendant

Charles B. Kenning
45 Exchange Street
Rochester, N.Y. 14614
Attorney for defendants in original action
and for Lewis General Tires Inc.

Sheldon P. Weitzman
502 Lincoln Building
Cleveland, Ohio 44114
Attorney for Donald E. Lewis

By order dated March 6, 1974, in the exercise
of discretion, Lewis General Tires Inc. was permitted to
intervene.

Lewis General Tires Inc. on September 19, 1974
filed a complaint against Donald E. Lewis, the plaintiff

in the original action. Donald E. Lewis on September 27, 1974 filed his answer to the complaint of Lewis General Tires Inc.

By motion filed February 6, 1975, Donald E. Lewis, plaintiff in the original action, moved to strike the answer of Richard E. Lewis Sr., filed in the original action, on the ground that Richard E. Lewis Sr. failed to appear for examination at the time and place set forth in plaintiff's notice for the taking of the deposition of Richard E. Lewis Sr. The motion was brought on for argument on March 10, 1975 by a notice of motion filed February 21, 1975.

By notice of cross motion filed March 10, 1975, and returnable March 10, 1975, Charles B. Kenning, on behalf of all of the defendants in the original action and on behalf of Lewis General Tires Inc., intervenor, moved to dismiss the complaint in the original action and for summary judgment on grounds set forth in the notice of cross motion, and in the alternative to stay all further proceedings by the plaintiff, Donald E. Lewis, in this court and in any other court, until such time as the issues in dispute between all the parties, by reason of an agreement of June 25, 1962, are submitted to binding arbitration and determined, and for an order fixing time for further depositions.

Donald E. Lewis on March 10, 1975 filed objections to the cross motion filed by Charles B. Kenning referred to above.

By order of this court dated March 6, 1974, referred to above, the application of the defendants in the original action for an order that Donald E. Lewis be required to submit to binding arbitration in accordance with a stockholders agreement dated June 25, 1962, was denied. That application now included in the cross motion filed by Charles B. Kenning on March 10, 1975 referred to above, is again denied.

The answer of Richard E. Lewis Sr. is stricken, unless Richard E. Lewis Sr. shall appear at the offices of Wickins, Ashnault, Schaefer & Maloy, 100 Times Square Building, Rochester, New York, at 1:00 P.M. on June 27, 1975, or at such other time and place as may be mutually agreed upon, for the taking of the oral deposition of Richard E. Lewis, Sr., according to the notice of deposition heretofore served upon Richard E. Lewis Sr. originally scheduled for December 18, 1974.

The cross motion of Charles B. Kenning filed March 10, 1975 is in all respects denied.

ALL OF THE ABOVE IS SO ORDERED. No costs or attorneys fees.

Harold P. Burke

HAROLD P. BURKE
United States District Judge

June 6, 1975.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DONALD E. LEWIS,
Plaintiff,

-vs-

S. L. & E. INC., LEON E. LEWIS, SR.,
ALAN E. LEWIS, LEON E. LEWIS, JR.
& RICHARD E. LEWIS, SR.,

Defendants.

NOTICE OF
CROSS MOTION

LEWIS GENERAL TIRES, INC.,
Plaintiff-Intervenor

Civ. 1973-396

-vs-

DONALD E. LEWIS,
Defendant.

SIR:

PLEASE TAKE NOTICE, that upon the Reply Affidavit of Charles B. Kenning, sworn to the 25th day of February, 1975 and the Exhibits attached thereto, and upon all other proceedings herein, the undersigned will make a Cross-Motion in the United States District Court, at the United States Courthouse, 100 State Street, Rochester, New York, on March 10th, 1975, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be made for an Order directing as follows:

A. That the application of the plaintiff, Donald E. Lewis be denied.

B. That the plaintiff, Donald E. Lewis's Complaint be dismissed and that Summary Judgment be granted to the defendants on the following grounds:

(1) That the plaintiff, Donald E. Lewis, heretofore on two occasions has failed to appear for duly noticed Examinations before Trial.

(2) That the plaintiff, Donald E. Lewis has failed to comply with the Order of the Hon. Harold P. Burke, dated November 14th, 1974 and the plaintiff, Donald E. Lewis, has failed to serve a duly signed copy of the deposition which was taken on November 14th, 1974.

(3) That the action of the plaintiff, Donald E. Lewis, be dismissed on the ground that it is premature and is subject to binding arbitration, as required by the Agreement of June 25th, 1962, and pursuant to Sec. 7501 of the C. P. L. R.

C. That in the alternative, all further proceedings by the plaintiff, Donald E. Lewis, be stayed in this Court, or any other Court, until such time as the issues in dispute between and among all the parties hereto by reason of the Agreement of June 25th, 1962, are submitted to binding arbitration and determined.

D. That if further depositions are to be taken, that the next deposition be taken of the defendant, Alan E. Lewis, at Deerfield Beach, Florida, the residence of Alan E. Lewis.

E. That the Plaintiff-Intervenor, Lewis General Tires, Inc., have an order of the Court directing that the plaintiff, Donald E. Lewis forthwith transfer his stock in S. L. & E. Inc. to Lewis General Tires, Inc., subject to the provisions of the Agreement of June 25th, 1962.

F. That Lewis General Tires, Inc., S. L. & E. Inc., Leon E.

Lewis, Sr., Richard E. Lewis, Sr. and Alan E. Lewis, have such other further and different relief as to the Court may appear just and proper, together with costs and disbursements.

DATED: February 28th, 1975.

Yours, etc.

KAUFMAN, KENNING, TYLE, PAULEY,
BAKER & D'AMANDA
Attorneys for S. L. & E. Inc., Leon E.
Lewis, Sr., Alan E. Lewis, Richard E.
Lewis, Sr. & Lewis General Tires, Inc.
Office & P.O. Address
1008 Times Square Bldg.
Rochester, New York 14614

TO:
SHELDON P. WEITZMAN, ESQ.
Attorney for Donald E. Lewis
Office & P.O. Address
502 Lincoln Building
Cleveland, Ohio 44114

KAUFMAN, KENNING, TYLE,
PAULEY, BAKER & D'AMANDA
ATTORNEYS AT LAW
45 EXCHANGE STREET
ROCHESTER, NEW YORK
14614

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DONALD E. LEWIS,

Plaintiff,

-vs-

S. L. & E. Inc., LEON E. LEWIS, SR.,
ALAN E. LEWIS, LEON E. LEWIS, JR.
AND RICHARD E. LEWIS, SR.,

Defendants.

REPLY AFFIDAVIT

LEWIS GENERAL TIRES, INC.,

Civ. 1973-396

Plaintiff-Intervenor,

-vs-

DONALD E. LEWIS,

Defendant.

STATE OF NEW YORK)
COUNTY OF MONROE) SS.

CHARLES B. KENNING, being duly sworn, deposes and says that he is an attorney duly licensed to practice in the State of New York, is a member of the law firm of Kaufman, Kenning, Tyle, Pauley, Baker & D'Amico with offices at 1008 Times Square Bldg., 45 Exchange Street, City of Rochester, County of Monroe and State of New York, and that he is the attorney for S. L. & E. Inc., Leon E. Lewis, Sr., Alan E. Lewis, Richard E. Lewis, Sr., and Lewis General Tires, Inc., Plaintiff-Intervenor.

That this Affidavit is being made in Reply to the Notice of Motion dated 2/19/75, which was made returnable on March 11th, 1975.

KAUFMAN, KENNING, TYLE,
PAULEY, BAKER & D'AMAND
ATTORNEYS AT LAW
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The plaintiff, Donald E. Lewis, was examined pursuant to an Order of this Court dated November 14th, 1974, as was Leon E. Lewis, Sr., one of the defendants, who is the father of the plaintiff, Donald E. Lewis; that the testimony of Leon E. Lewis, Sr. was taken for the purpose of preserving his testimony, since he is now eighty-six (86) years of age, and is presently in St. Mary's Hospital Rochester, New York; that the reason it was necessary to secure an Order of the Court to take the deposition of Donald E. Lewis, was the fact that on two prior occasions Donald E. Lewis Did not appear for an Examination before Trial, pursuant to Notices that were forwarded to his attorney, Sheldon P. Weitzman, Esq. That a copy of that Order is attached hereto, made a part hereof and marked EXHIBIT A.

That at the time the Order was returnable before the Hon. Harold P. Burke, your deponent appeared in behalf of S. L. & E. Inc., Leon E. Lewis, Sr., Alan E. Lewis, Richard E. Lewis, Sr. and Lewis General Tires, Inc., as Plaintiff-Intervenor, and Anthony A. Gedos, Esq., appeared in behalf of the plaintiff, Donald E. Lewis.

That attached hereto, made a part hereof, and marked EXHIBIT B is a copy of the Shareholders' Agreement dated June 25th, 1962; that the dispute herein has arisen, and said dispute by the Agreement is subject to arbitration, as provided in Section 7501 of the C. P. L. R. That at about the time the Agreement of June 25th, 1962, the defendant, Leon E. Lewis, Sr. gave a gift of fifteen (15) shares of the stock of the defendant, S. L. & E. Inc. to each of his six children, one of whom is the plaintiff, Donald E. Lewis, and

thereafter, a gift tax return was duly filed by Leon E. Lewis, Sr., wherein the value of the fifteen (15) shares of the stock given to Donald E. Lewis was indicated to be the sum of Ten Thousand Dollars (\$10,000.00).

That at the Examination before Trial of Donald E. Lewis on November 14th, 1974, the major complaint of Donald E. Lewis was the allegation that Lewis General Tires, Inc. was not charged a sufficient amount of rent by the defendant, S. L. & E. Inc. from 1962 to 1972. That the only major asset of S. L. & E. Inc. is the parcel of land at the corner of East Avenue and Pitkin Street, in the City of Rochester, New York, known as 260 East Avenue and that property was subject to a Lease which was duly signed by Leon E. Lewis, Sr. and Alan E. Lewis, as officers of S. L. & E. Inc. and Lewis General Tires, Inc., which Lease was in full force and effect on June 25th, 1962, at which time, Donald E. Lewis became a gratuitous donee of fifteen (15) shares of S. L. & E. Inc.; that a copy of said Lease is attached hereto, made a part hereof and marked EXHIBIT C.

That at the time the Lease was entered into and at the time the Agreement of June 25th, 1962 was entered into, the defendants, Leon E. Lewis, Sr. and Alan E. Lewis were the principal officers of both S. L. & E. Inc. and Lewis General Tires, Inc., and the defendants, Richard E. Lewis and Leon E. Lewis, Jr. were both minority stockholders of Lewis General Tires, Inc. and S. L. & E. Inc.

That at the time Anthony A. Gedos, Esq. appeared in Court in connection with the Motion to Take the Deposition of Donald E. Lewis,

Anthony A. Gedos, Esq. did not oppose the application for the Order and was understood that only the deposition of Donald E. Lewis and Leon E. Lewis, Sr. would be taken at Rochester, New York, and that all other depositions would be taken subject to further Order of the court, and if other depositions were necessary, that the next deposition to be taken would be that of Alan E. Lewis, since he was an active officer of Lewis General Tire Inc. at the time the Lease was entered into, a copy of which Lease is designated as EXHIBIT C, and also at the time the Stockholders' Agreement was entered into, which is designated as EXHIBIT B. That Alan E. Lewis now resides at Deerfield Beach, Florida and if further depositions are to be taken, the deposition of Alan E. Lewis should be taken at Deerfield Beach, Florida, pursuant to Order of this Court.

That there are further objections to the application which has been made by Sheldon P. Weltzman, Esq., namely, that the examination of Donald E. Lewis has not been completed, in that a signed copy of the transcript of said examination has not been furnished by Donald E. Lewis or his attorney, Sheldon P. Weltzman, Esq., in spite of the fact that Sheldon P. Weltzman, Esq. refused to waive the signing of the deposition of Donald E. Lewis, and attached hereto, made a part hereof and marked EXHIBIT D is a copy of Page 7 of the unsigned transcript of part of the testimony given by Donald E. Lewis on November 14th, 1974, which clearly shows that Sheldon P. Weltzman, Esq. has not complied with his own requirement that the deposition herein be signed.

That the action herein brought by Donald E. Lewis, has been characterized as a class action or stockholders' derivative suit, but in fact, Donald E. Lewis represents no one other than himself, since his sister, Catherine Rankin, has sold and transferred her stock pursuant to the Agreement of June 25th, 1962, and his sister, Margaret Mead, has also sold and transferred her stock pursuant to the Agreement of June 25th, 1962, in the same manner that Alan E. Lewis sold and transferred his stock, pursuant to the Agreement of June 25th, 1962, and there are no other stockholders whom Donald E. Lewis represents, other than himself.

That your deponent knows of his own knowledge that Lewis General Tires, Inc. has attempted to comply with the Agreement of June 25th, 1962, and has purchased the stock of all shareholders of S. L. & E. Inc., who were not shareholders of stock of Lewis General Tires, Inc. on June 25th, 1972; that your deponent has written to Sheldon P. Weitzman, Esq. and to Donald E. Lewis, as has Richard E. Lewis, Sr., individually and as president of Lewis General Tires, Inc., and has requested that Donald E. Lewis submit the dispute herein to arbitration, as provided for in the Agreement of June 25th, 1962, and as required by Section 7501 of the C.P.L.R., but both Donald E. Lewis and Sheldon P. Weitzman, Esq., his attorney, have affirmatively refused to either transfer the stock of S. L. & E. Inc. standing in the name of Donald E. Lewis, or to submit to arbitration, as expressly provided for in the Agreement of June 25th, 1962.

WHEREFORE, your deponent respectfully prays for an Order of

KAUFMAN, KENNING, TYLE,
PAULEY, BAKER & D'AMANDA
ATTORNEYS AT LAW
45 EXCHANGE STREET
ROCHESTER, NEW YORK

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the Court directing as follows:

A. That the application of the plaintiff, Donald E. Lewis be denied.

B. That the plaintiff, Donald E. Lewis's Complaint be dismissed and that Summary Judgment be granted to the defendants on the following grounds:

(1) That the plaintiff, Donald E. Lewis, heretofore on two occasions, has failed to appear for duly noticed Examinations before Trial.

(2) That the plaintiff, Donald E. Lewis, has failed to comply with the Order of the Hon. Harold P. Burke, dated November 14th, 1974, and the plaintiff, Donald E. Lewis, has failed to serve a duly signed copy of the deposition which was taken on November 14th, 1974.

(3) That the action of the plaintiff, Donald E. Lewis, be dismissed on the ground that it is premature and is subject to binding arbitration, as required by the Agreement of June 25th, 1962, and pursuant to Section 7501 of the C. P. L. R.

C. That in the alternative, all further proceedings by the plaintiff, Donald E. Lewis, be stayed in this Court, or any other Court, until such time as the issues in dispute between and among all the parties hereto by reason of the Agreement of June 25th, 1962, are submitted to binding arbitration and determined.

D. That if further depositions are to be taken, that the next deposition be taken of the defendant, Alan E. Lewis, at Deerfield Beach, Florida, the residence of Alan E. Lewis.

F. That the Plaintiff-Intervenor, Lewis General Tires, Inc., have an Order of the Court directing that the plaintiff, Donald E. Lewis, forthwith transfer his stock in S. L. & E. Inc. to Lewis General Tires, Inc., subject to the provisions of the Agreement of June 25th, 1962.

F. That Lewis General Tires, Inc., S. L. & E. Inc., Leon E. Lewis, Sr., Richard E. Lewis, Sr. and Alan E. Lewis, have such other further and different relief as to the Court may appear just and proper, together with costs and disbursements.

CHARLES B. KENNING

SWORN TO before me this
25th day of February, 1975.

CEAL M. STONE

NOTARY PUBLIC

EXHIBIT "A"

ORDER OF THE HON. HAROLD P. BURKE DATED 11/14/74

KAUFMAN, KENNING, TYLE,
PAULEY, BAKER & D'AMANDA
ATTORNEYS AT LAW
45 EXCHANGE STREET
ROCHESTER, NEW YORK

14514

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DONALD E. LEWIS,
18123 Scottsdale Blvd., Cleveland, Ohio,
on his own behalf and on behalf of all other share-
holders similarly situated of S. L. & E. Inc., and in
the right of S. L. & E. Inc.,

Plaintiff,

-VS-

S. L. & E. Inc.
260 East Avenue, Rochester, N. Y., a corporation,
Defendant,

and

ORDER

LEON E. LEWIS, SR.,
145 Inglewood Drive, Rochester, N. Y.

Defendant,

and

Civ. 1973-396

ALAN E. LEWIS,
1100 S. E. 10th St., Deerfield Beach, Florida,
Defendant,

and

LEON E. LEWIS, JR.
132 Hollybrook Drive
Penfield, New York,

Defendant,

and

RICHARD E. LEWIS, SR.
75 Pickwick Drive, Brighton, New York,
Defendant.

LEWIS GENERAL TIRES, INC.,
3870 W. Henrietta Rd. (Town of Henrietta)
Rochester, New York 14623,

Plaintiff-Intervenor,

-VS-

DONALD E. LEWIS
18123 Scottsdale Blvd., Cleveland, Ohio
Defendant

The plaintiff, Donald E. Lewis, having made a Motion in this Court held in and for the Western District of New York, at the United States Court-house, 100 State Street, City of Rochester, County of Monroe and State of New York, returnable on the 23rd day of September, 1974, for the purpose of settling a date for a discovery herein, and the plaintiff having appeared by Sheldon P. Weitzman, Esq., Anthony Geddes, Esq., of counsel, in favor of said application, and the defendants, S. L. & E. Inc., Leon E. Lewis, Sr., Alan E. Lewis, Richard E. Lewis, Sr., and Lewis General Tires, Inc., as plaintiff-intervenor having appeared by Kaufman, Kenning, Tyle, Pauley, Baker & D'Amanda, Charles B. Kenning, Esq., of counsel, also in favor of said application, and upon the Notice to Take the Deposition Upon Oral Examination of Donald E. Lewis, dated November 26th, 1973, served on Sheldon P. Weitzman, Esq., which Notice appears to be the first Notice for a Deposition to have been served herein, and Charles B. Kenning, Esq. having advised the Court that the Examination of Donald E. Lewis having been scheduled by his office on two prior occasions, and having informed the Court that it was desirable to take the deposition of Leon E. Lewis, Sr. to preserve his testimony, since the said Leon E. Lewis, Sr. is eighty-six (86) years of age, and that the said Leon E. Lewis, Sr.'s testimony could be taken immediately following the deposition of the plaintiff, Donald E. Lewis, and that the examination of other parties which may be deemed necessary could be scheduled upon the completion of taking of the deposition of the plaintiff, Donald E. Lewis, and the deposition of Leon E.

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ATTORNEYS AT LAW
45 EXCHANGE STREET
ROCHESTER, NEW YORK

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Lewis, Sr., and Anthony Geddes, Esq. having agreed to this procedure, and upon the Notice of Examination before Trial dated November 26th, 1973, and upon the pleadings and all other proceedings herein, it is

ORDERED, that Donald E. Lewis shall and he hereby is directed to appear at the office of Kaufman, Kenning, Tyle, Pauley, Baker & D'Amanda at 1008 Times Square Bldg., 45 Exchange Street, Rochester, New York, on the 14th day of November, 1974 at 2:00 o'clock P.M., for the purpose of taking his deposition, pursuant to the Notice herein dated November 26th, 1973 and at that time the said Donald E. Lewis shall produce all records relating to the stock of S. L. & E. Inc. in his possession or under his control, including all records of the transfer of said stock to any member of his family, if any, in accordance with the Shareholders' Agreement herein, and it is further

ORDERED, that upon completion of the examination of Donald E. Lewis, as plaintiff, the deposition of Leon E. Lewis, Sr. shall then be taken by Sheldon P. Weitzman, Esq. on all matters relating to the Complaint of the plaintiff herein, and it is further

ORDERED, that upon completion of the taking of the depositions of Donald E. Lewis, as plaintiff, and Leon E. Lewis, Sr., as defendant, that thereafter the attorney for the plaintiff may serve a proper Notice or apply for a further Order of this Court to take the deposition of any other party to the action herein, and it is further

ORDERED, that the application in so far as it is granted herein

KAUFMAN, KENNING, TYLE,
PAULEY, BAKER & D'AMANDA
ATTORNEYS AT LAW
45 EXCHANGE STREET
ROCHESTER, NEW YORK

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shall be without costs to any party.

Dated: November 14, 1974.

~~CONFIDENTIAL~~

Cecilia R. Ruff

United States District ~~Court~~ Judge

KAUFMAN, KENNING, TYLER,
PAULEY, BAKER & D'AMANDA
ATTORNEYS AT LAW
45 EXCHANGE STREET
ROCHESTER, NEW YORK

14614

EXHIBIT 'B'

COPY OF STOCKHOLDERS'S AGREEMENT DATED 6/25/62

AGREEMENT

THIS AGREEMENT, made and entered into the 25th day of JUNE, 1962, by and between ALAN E. LEWIS, residing at 3632 East Avenue, Rochester 18, New York, RICHARD E. LEWIS, residing at 75 Pickwick Drive, Rochester 18, New York, LEON E. LEWIS, JR., residing at 1584 Scribner Road, Penfield, New York, DONALD E. LEWIS, residing at 2641 Bishop Road, Wickliffe, Ohio, CAROL RANKIN, residing at So. Myrtle Beach, South Carolina, and MARGARET MEAD, residing at 38 Del Rio Drive, Rochester 18, New York, hereinafter collectively sometimes referred to as the Stockholders.

WITNESSETH:

WHEREAS, the parties hereto now own stock of S. L. & E. INC., a corporation organized and existing under the laws of the State of New York as follows:

<u>NAME</u>	<u>NUMBER OF SHARES</u>
ALAN E. LEWIS	15
RICHARD E. LEWIS	15
LEON E. LEWIS, JR.	15
DONALD E. LEWIS	15
CAROL RANKIN	15
MARGARET MEAD	15
TOTAL	90

WHEREAS, the parties hereto desire to promote their mutual interests and the interests of the corporation by imposing certain restrictions and obligations on themselves and on the shares of stock of the corporation including the stock now issued and all stock of said corporation which may hereafter be issued to the parties hereto.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. NO TRANSFER WITHOUT CONSENT OF ALL PARTIES TO THIS AGREEMENT.

No Stockholder shall encumber or dispose of all or any part of his or her stock in the corporation now owned or hereafter acquired by him or her without the written consent of the other Stockholders who then own stock in accordance with this Agreement. In the event that stock is sold or transferred with the consent of the parties to this Agreement, further sale or transfer shall in such event be only with the consent of such parties who shall continue to own stock in the corporation after such sale or transfer to which there is a consent shall have been completed.

2. TRANSFER TO MEMBERS OF FAMILY.

Any Stockholder, notwithstanding other provisions in this Agreement, may transfer all or part of his stock by gift to or for the benefit of himself, his wife, or other members of his family. In such case, the transferees shall receive and hold such stock subject to the terms of this Agreement and to the obligations hereunder of the transferor, and there shall be no further transfer of such stock except by gift between members of such family or except in accordance with the other terms of this Agreement.

3. PURCHASE OF STOCK BY LEWIS GENERAL TIRES, INC.

The parties hereto who are not owners of stock in LEWIS GENERAL TIRES, INC. on the 1st day of June, 1972, shall within thirty (30) days from that date, sell and transfer their stock in S. L. & F. INC., to LEWIS GENERAL TIRES, INC., and LEWIS GENERAL TIRES, INC. shall buy such stock at a price equal to the book value of the stock on June 1st, 1972. The purchase price from LEWIS GENERAL TIRES, INC. shall be paid in forty (40) equal quarterly principal installments commencing the 1st

day of September, 1972, plus accrued interest at the rate of six percentum (6%) per annum, based on unpaid balances and a like amount of principal plus accrued interest shall be paid on the 1st day of each quarter thereafter until paid in full, with the privilege of prepayment without penalty to LEWIS GENERAL TIRES, INC. on any installment date, in full or in part, so long as such prepayment shall be applied to the principal payment having the longest maturity then outstanding. On the date of transfer of such stock as hereinafter provided, LEWIS GENERAL TIRES, INC. will execute and deliver its promissory note in a sum equal to the book value of the stock of S. L. & E. INC. so purchased, or the purchase price agreed on by a certificate of agreed value, and such note shall bear interest thereon at the rate of six per cent (6%) per annum as aforesaid.

4. PLEDGE AS SECURITY.

As security for the payment of the shares of stock purchased by LEWIS GENERAL TIRES, INC. the entire number of shares so purchased shall be pledged with the party transferring such stock to secure the full payment of the purchase price and interest thereon. Upon default by LEWIS GENERAL TIRES, INC. in paying any installment due on the note given as payment for said stock, the party holding such note, at his or her option and after notice as hereinafter provided, may declare the entire unpaid balance of the note which shall be in default, immediately due and payable. The party holding the note of LEWIS GENERAL TIRES, INC., after thirty (30) days from the date of default, shall serve upon LEWIS GENERAL TIRES, INC. by certified mail, a notice advising of the default and giving LEWIS GENERAL TIRES, INC. ten (10) days from the date of service of such notice to cure said default. Upon failure of LEWIS GENERAL TIRES, INC. to cure the default, the holder of the note shall be authorized to sell that proportion of the pledged stock held by him or her which is not paid for, and immediately thereafter deliver to LEWIS GENERAL

TIRES, INC. that proportion of the stock for which the said party his or her executors, administrators or assigns, have been fully paid. In determining said proportions, the ratio shall be the same as the amount paid by LEWIS GENERAL TIRES, INC. in relation to the total amount of the note given in payment. The party who is the holder of such note, his or her executors, administrators or assigns, is authorized to sell the proportion not paid for at public or private sale, and to apply the net proceeds after deducting all expenses of sale, including reasonable attorney's fees, to the payment of the balance due on said note, the surplus, if any, after the application of such proceeds, to be returned to LEWIS GENERAL TIRES, INC., but LEWIS GENERAL TIRES, INC. in the event of such default, shall be liable for any deficiency after sale, if any.

5. BOOK VALUE.

Whenever in this Agreement the term "book value" is used, it shall mean the book value of the stock of the corporation as of the applicable date, as determined by the accountant or accounting firm then servicing the corporation, and such determination when made, certified and delivered to the corporation, shall be binding upon the corporation and upon all parties bound by the terms of this Agreement. Such determination shall be made in accordance with sound accounting practice applied on a consistent basis and the following shall be observed:

- (a) Allowance for good will, trade name and any similar intangible asset shall be the sum of One Hundred Dollars (\$100.00).
- (b) The real property value for land and buildings owned by the corporation shall be established by the mesne of two appraisers who shall be M.I.A. appraisers and one shall be selected by the party selling his or her stock pursuant to Paragraph 3 hereof and the other shall be selected by LEWIS GENERAL TIRES, INC.
- (c) All accounts payable shall be taken at the face amount, and all accounts receivable shall be taken at the face amount thereof.

- (d) Raw materials, supplies and inventory of merchandise shall be computed at cost, or market value, whichever is lower.
- (e) All machinery, trucks, fixtures, tools, gauges and attachments, and equipment shall be taken at book value as such appears on the books of the respective corporation.
- (f) All unpaid and accrued taxes shall be deducted as liabilities plus provision for estimated Federal and State Income Tax and New York State franchise taxes for the period since the close of the last fiscal year to the end of the month preceding the applicable date.

Notwithstanding the foregoing the Stockholders may at any time fix the agreed value of the stock of the corporation by a certificate of agreed value of the stock of the corporation, signed by each stockholder and filed with the corporation. If at any time, when it becomes necessary to determine the book value of the stock of the corporation, a certificate of agreed value is in existence and such certificate of agreed value is dated less than one (1) year before the date as of which the book value is to be determined, then the agreed value set forth in such certificate shall be conclusive as to book value and shall be accepted as the book value as of the date on which book value is to be determined, and no accountant's determination of book value shall be required or made. In no event, shall a certificate of agreed value be effective unless signed by the Stockholders. The Stockholders may at any time execute a new certificate of agreed value which shall automatically replace all prior certificates of agreed value, and in no event shall any but the last certificate of agreed value be effective, if at all, for the purposes herein specified.

6. NECESSARY DOCUMENTS.

If, under the terms of this Agreement, the stock of any Stockholder, or of any transferee who has received any stock in accordance with the provisions of Paragraph 2, is purchased or retired, such Stockholder or transferee, or the legal representatives of such Stockholder or transferee, shall execute and deliver all necess-

any documents that may be reasonably required for accomplishing a complete transfer of such stock for the purpose of the purchase or retirement transaction.

7. NOTICE. Whenever under this Agreement notice is required to be given, it shall be given in writing, and if such notice is served by registered mail, it shall be deemed to have been given on the date such notice is posted.

8. ENDORSEMENT ON STOCK CERTIFICATES. Upon the execution of this Agreement, the certificates of stock subject hereto shall be surrendered to the corporation and endorsed as follows:

"The shares of stock represented by this Certificate are subject to, and are transferable only on compliance with an Agreement dated the 25th day of JUNE, 1962, between ALAN E. LEWIS, RICHARD E. LEWIS, LEON E. LEWIS, JR., DONALD E. LEWIS, CAROL RANKIN and MARGARET MEAD, a copy of which is on file in the office of the Secretary of the Corporation".

After endorsement, the certificates shall be returned to the Stockholders, who shall, subject to the terms of this Agreement, be entitled to exercise all rights of ownership of such stock. All stock of the corporation hereafter issued to any of the Stockholders shall bear the same endorsements.

9. CONTROL. The Stockholders shall always vote their stock to provide for the following:

(a) The Directors shall be LEON E. LEWIS, SR., ALAN E. LEWIS, RICHARD E. LEWIS, LEON E. LEWIS, JR., and such other party or parties as the parties hereto unanimously agree upon.

(b) All corporate checks may be signed by the President and one other officer.

(c) The consent of at least two of the parties to this Agreement who are then officers of LEWIS GENERAL TIRES, INC., shall be required with respect to the following: In paying dividends to the

Stockholders, determining the compensation of officers; leases; purchases and/or sales by the corporation other than in the normal course of business; borrowing money by the corporation; pledging of corporate assets by way of assignment, mortgage or otherwise.

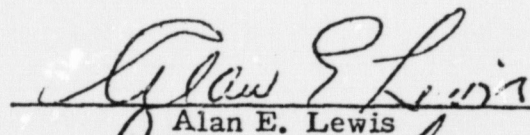
10. BENEFIT.

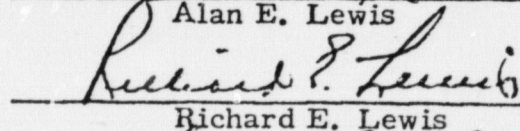
This Agreement shall be binding upon and shall operate for the benefit of the Stockholders and their respective executors and administrators, shall be binding upon any transferee who has received any stock in accordance with the provisions of Paragraph 2, and the executor or administrator of such transferee, and shall be binding upon any person to whom any of the stock of the Stockholders is transferred in violation of the provisions of this Agreement, and the executor or administrator of such person.

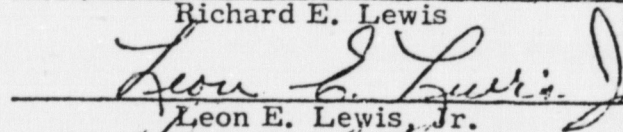
11. ARBITRATION.

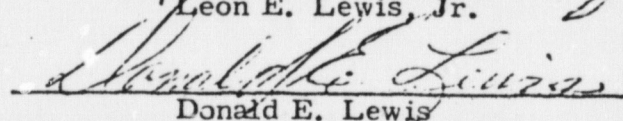
In the event of any dispute under this Agreement, such dispute shall be settled by arbitration in Rochester, New York, in accordance with the rules then obtaining of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction.

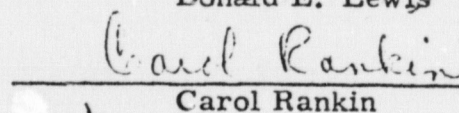
IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

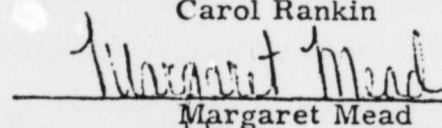

Alan E. Lewis


Richard E. Lewis


Leon E. Lewis, Jr.


Donald E. Lewis


Carol Rankin


Margaret Mead

STEWART, SCHANTZ,
KENNING & CLAPP
ATTORNEYS AT LAW
TIMES SQUARE BLDG.
45 EXCHANGE STREET
ROCHESTER 14, N. Y.

In consideration of the mutual covenants herein contained and for other good and valuable consideration, LEWIS GENERAL TIRES, INC., hereby agrees to be bound by the agreement between ALAN E. LEWIS, RICHARD E. LEWIS, LEON E. LEWIS, JR., DONALD E. LEWIS, CAROL RANKIN and MARGARET LEAD, and to perform the covenants made on behalf of LEWIS GENERAL TIRES, INC. contained therein.

LEWIS GENERAL TIRES, INC.

BY: Alan E. Lewis
Alan E. Lewis, President.

STATE OF NEW YORK)
COUNTY OF MONROE) SS.

On this 25th day of June, Nineteen Hundred and Sixty-Two, before me personally came ALAN E. LEWIS, to me personally known, who, being by me duly sworn, did depose and say that he resides in the Town of Pittsford, County of Monroe and State of New York; that he is the President of LEWIS GENERAL TIRES, INC., the corporation described in and which executed the above Instrument; that he knows the seal of said corporation; that the seal affixed to said Instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Charles Bernard Kenning

CHARLES BERNARD KENNING
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1963

EXHIBIT "C"

COPY OF LEASE

KAUFMAN, KENNING, TYLER,
PAULEY, BAKER, D'AMANDA
ATTORNEYS AT LAW
45 EXCHANGE STREET
ROCHESTER, NEW YORK

14514

This Lease made the 28th day of February 1956, between

S. L. & E., INC. 260 East Avenue, Rochester, New York
hereinafter referred to as LANDLORD, and

LEWIS GENERAL TIRES, INC. 260 East Avenue, Rochester, New York
hereinafter jointly, severally and collectively referred to as TENANT.

Witnesseth, that the Landlord hereby leases to the Tenant, and the Tenant hereby hires and takes
from the Landlord lot nos. 42, 43, 47, 52, 53 and part of lots 48 and 49
of the Vineyard Tract
in the building known as
256-264 East Avenue, 4 - 6 Winthrop Street and all property
fronting on the west side of Pitkin Street of S. L. & E. INC.
City of Rochester to be used and occupied by the Tenant
as a tire store and for services relating thereto

and for no other purpose, for a term to commence March 1, 1956, and to end on February 28, 1960
unless sooner terminated as hereinafter provided, at the ANNUAL RENT of Fourteen Thousand
Four Hundred Dollars (\$14,400.00).

all payable in equal monthly instalments in advance on the first day of each and every calendar month during said term,
except the first instalment, which shall be paid upon the execution hereof.

THE TENANT JOINTLY AND SEVERALLY COVENANTS

FIRST.—That the Tenant will pay the rent as above provided.

REPAIRS
ORDINANCES AND VIOLATIONS
ENTRY
INDEMNIFY LANDLORD
SECOND.—That, throughout said term the Tenant will take good care of the demised premises, fixtures and appurtenances, and all alterations, additions and improvements to either; make all repairs in and about the same necessary to preserve them in good order and condition, which repairs shall be, in quality and class, equal to the original work; promptly pay the expense of such repairs; suffer no waste or injury; give prompt notice to the Landlord of any fire that may occur; execute and comply with all laws, rules, orders, ordinances and regulations at any time issued or in force (except those requiring structural alterations), applicable to the demised premises or to the Tenant's occupation thereof, of the Borough, City, County, State and Federal Governments, and of each and every department, bureau and official thereof, and of the New York Board of Fire Underwriters; permit at all times during usual business hours, the Landlord and representatives of the Landlord to enter the demised premises for the purpose of inspection, and to exhibit them for purposes of sale or rental; suffer the Landlord to make repairs and improvements to all parts of the building, and to comply with all orders and requirements of governmental authority applicable to said building or to any occupation thereof; suffer the Landlord to erect, use, maintain, repair and replace pipes and conduits in the demised premises and to the floors above and below; forever indemnify and save harmless the Landlord for and against any and all liability, penalties, damages, expenses and judgments arising from injury during said term to person or property of any nature, occasioned wholly or in part by any act or act, omission or omissions of the Tenant, or of the employees, guests, agents, assigns or undertenants of the Tenant and also for any matter or thing growing out of the occupation of the demised premises or of the streets, sidewalks or vaults adjacent thereto; permit, during the six months next prior to the expiration of the term the usual notice "To Let" to be placed and to remain unmolested in a conspicuous place upon the exterior of the demised premises; repair, at or before the end of the term, all injury done by the installation or removal of furniture and property; and at the end of the term, to quit and surrender the demised premises with all alterations, additions and improvements in good order and condition.

MOVING INJURY SURRENDER
NEGATIVE COVENANTS
OBSTRUCTION SIGNS
THIRD.—That the Tenant will not disfigure or deface any part of the building, or suffer the same to be done, except so far as may be necessary to affix such trade fixtures as are herein consented to by the Landlord; the Tenant will not obstruct, or permit the obstruction of the street or the sidewalk adjacent thereto; will not do anything, or suffer anything to be done upon the demised premises which will increase the rate of fire insurance upon the building or any of its contents, or be liable to cause structural injury to said building; will not permit the accumulation of waste or refuse matter, and will not, without the written consent of the Landlord first obtained in each case, either sell, assign, mortgage or transfer this lease, underlet the demised premises or any part thereof; permit the same or any part thereof to be occupied by anybody other than the Tenant and the Tenant's employees, make any alterations in the demised premises, use the demised premises or any part thereof for any purpose other than the one first above stipulated, or for any purpose deemed extra hazardous on account of fire risk, nor in violation of any law or ordinance. That the Tenant will not obstruct or permit the obstruction of the light, halls, stairway or entrances to the building, and will not erect or inscribe any sign, signals or advertisements unless and until the style and location thereof have been approved by the Landlord; and if any be erected or inscribed without such approval, the Landlord may remove the same.

IT IS MUTUALLY COVENANTED AND AGREED, THAT

FIRE CLAUSE
FOURTH.—If through no fault or negligence of the Tenant the said leased premises shall be partially damaged by fire, repairs shall be made by the Landlord and the rent, until such repairs shall be made, shall be apportioned in proportion to the portion of the premises which are still usable; in such case, if the damage shall be so extensive as to render said leased premises wholly untenable, the rent shall cease until such time as said premises shall have been put in repair; but in the event of the total destruction of the building by fire or otherwise, through no fault or negligence of the Tenant, or in case the damage to the leased premises shall be so extensive that they cannot, in the opinion of the Landlord, be repaired within ninety days, or if the Landlord shall decide to rebuild, then the rent shall be paid only up to the time of such destruction or damage and all interest of the Tenant in the leased premises shall terminate, and this lease shall become void from such time. In the event that any question shall arise between the Landlord and the Tenant as to whether or not repairs shall have been made with reasonable despatch, due allowance shall be made for any delay which may arise in connection with the adjustment of the fire insurance loss, and for any reason of inconvenience, annoyance or injury to business arising from the necessity of repairing any portion of the building, however the necessity may occur.

EMINENT DOMAIN
FIFTH.—If the whole or any part of the premises hereby demised shall be taken or condemned by any competent authority for any public use or purpose then the term hereby granted shall cease from the time when possession of the part so taken shall be required for such public purpose and without apportionment of award, the Tenant hereby assigning to the Landlord all right and claim to any such award, the current rent, however, in such case to be apportioned.

LEASE NOT IN EFFECT
DEFAULTS
TEN DAY NOTICE
SIXTH.—If, before the commencement of the term, the Tenant be adjudicated a bankrupt, or make a "general assignment," or take the benefit of any insolvent act, or if a Receiver or Trustee be appointed for the Tenant's property, or if this lease or the estate of the Tenant hereunder be transferred or pass to or be conveyed upon any other person or corporation, or if the Tenant shall default in the performance of any agreement by the Tenant contained in any other lease to the Tenant by the Landlord or by any corporation of which an officer of the Landlord is a Director, this lease shall thereby, at the option of the Landlord, be terminated premises. If after the commencement of the term, any of the events mentioned above in this subdivision shall occur, or if Tenant shall make default in fulfilling any of the covenants of this lease, other than the covenants for the payment of rent or "additional rent" or if the demised premises become vacant or deserted, the Landlord may give to the Tenant ten days' notice of intention to end the term of this lease, and thereupon at the expiration of said ten days' (if said condition which was the basis of said notice shall continue to exist) the term under this lease shall expire as fully and completely as if that day were the date herein definitely fixed for the expiration of the term and the Tenant will then quit and surrender the demised premises to the Landlord, but the Tenant shall remain liable as hereinafter provided.

D. J. S. Ex "D"
24. MJP
11-14-74

RE-POSSESSION
BY LANDLORD

RE-LETTING

WAIVER
BY TENANT

REMEDIES ARE
CUMULATIVE

LANDLORD MAY
PERFORM
ADDITIONAL
RENT

AS TO
WAIVERS

COLLECTION
OF RENT
FROM OTHERS

MORTGAGES

IMPROVEMENTS

NOTICES

NO LIABILITY

NO
ABATEMENT

RULES, ETC.

SHORING OF
WALLS

VAULT SPACE

ENTRY

NO REPRE-
SENTATIONS

ATTORNEYS
FEES

If the Tenant shall make default in the payment of the rent reserved hereunder, or any item of "additional rent" herein mentioned, or any part of either or in making any other payment herein provided for, or if the notice last above provided for shall have been given and if the condition which was the basis of said notice shall exist at the expiration of said ten days' period, the Landlord may immediately, or at any time thereafter, re-enter the demised premises and remove all persons and all or any property therefrom, either by summary dispossession proceedings, or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution or damages therefor, and re-possess and enjoy said premises together with all additions, alterations and improvements. In any such case or in the event that this lease be "terminated" before the commencement of the term, as above provided, the Landlord may either re-let the demised premises or any part or parts thereof for the Landlord's own account, or may, at the Landlord's option, re-let the demised premises or any part or parts thereof as the agent of the Tenant, and receive the rents therefor, applying the same first to the payment of such expenses as the Landlord may have incurred, and then to the fulfillment of the covenants of the Tenant herein, and the balance, if any, at the expiration of the term first above provided for, shall be paid to the Tenant. Landlord may rent the premises for a term extending beyond the term hereby granted without releasing Tenant from any liability. In the event that the term of this lease shall expire as above in this subdivision "Sixth" provided, or terminate by summary process, or otherwise, and if the Landlord shall not re-let the demised premises for the Landlord's own account, then, whether or not the premises be re-let, the Tenant shall remain liable for, and the Tenant hereby agrees to pay to the Landlord, until the time when this lease would have expired but for such termination or expiration, the equivalent of the amount of all of the rent and "additional rent" reserved herein, less the avails of reletting, if any, and the same shall be due and payable by the Tenant to the Landlord on the several rent days above specified, that is, upon each of such rent days the Tenant shall pay to the Landlord the amount of deficiency then existing. The Tenant hereby expressly waives any and all right of redemption in case the Tenant shall be dispossessed by judgment or warrant of any court or judge, and the Tenant waives and will waive all right to trial by jury in any summary proceedings hereafter instituted by the Landlord against the Tenant in respect to the demised premises. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning.

In the event of a breach or threatened breach by the Tenant of any of the covenants or provisions hereof, the Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity, as if re-entry, summary proceedings and other remedies were not herein provided for.

SEVENTH.—If the Tenant shall make default in the performance of any covenant herein contained, the Landlord may immediately, or at any time thereafter, without notice, perform the same for the account of the Tenant. If a notice of mechanic's lien be filed against the demised premises or against premises of which the demised premises are part, for, or purporting to be for, labor or material alleged to have been furnished, or to be furnished to or for the Tenant at the demised premises, and if the Tenant shall fail to take such action as shall cause such lien to be discharged within fifteen days after the filing of such notice, the Landlord may pay the amount of such lien or discharge the same by deposit or by bonding proceedings, and in the event of such deposit or bonding proceedings, the Landlord may require the lienor to prosecute an appropriate action to enforce the lienor's claim. In such case, the Landlord may pay any judgment recovered on such claim. Any amount paid or expense incurred by the Landlord as in this subdivision of this lease provided, and any amount as to which the Tenant shall at any time be in default for or in respect to the use of water, electric current or sprinkler supervisory service, and any expense incurred or sum of money paid by the Landlord by reason of the failure of the Tenant to comply with any provision hereof or in defending any such action, shall be deemed to be "additional rent" for the demised premises, and shall be due and payable by the Tenant to the Landlord on the first day of the next following month, or, at the option of the Landlord, on the first day of any succeeding month. The receipt by the Landlord of any instalment of the regular stipulated rent hereunder or any of said "additional rent" shall not be a waiver of any other "additional rent" then due.

EIGHTH.—The failure of the Landlord to insist, in any one or more instances upon a strict performance of any of the covenants of this lease, or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment for the future of such covenant or option, but the same shall continue and remain in full force and effect. The receipt by the Landlord of rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach and no waiver by the Landlord of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Landlord. Even though the Landlord shall consent to an assignment hereof no further assignment shall be made without express consent in writing by the Landlord.

NINTH.—If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than the Tenant the Landlord may collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, and no such collection shall be deemed a waiver of the covenant herein against assignment and underletting, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of the Tenant from the further performance by the Tenant of the covenants herein contained on the part of the Tenant.

TENTH.—This lease shall be subject and subordinate at all times, to the lien of the mortgages now on the demised premises, and to all advances made or hereafter to be made upon the security thereof, and subject and subordinate to the lien of any mortgage or mortgages which at any time may be made a lien upon the premises. The Tenant will execute and deliver such further instrument or instruments subordinating this lease to the lien of any such mortgage or mortgages as shall be desired by any mortgagee or mortgagees. The Tenant hereby appoints the Landlord the attorney-in-fact of the Tenant, irrevocable, to execute and deliver any such instrument or instruments for the Tenant.

ELEVENTH.—All improvements made by the Tenant to or upon the demised premises, except said trade fixtures, shall when made, at once be deemed to be attached to the freehold, and become the property of the Landlord, and at the end of the term of the term, shall be surrendered to the Landlord in as good order and condition as they were when installed, reasonable wear and damages by the elements excepted.

TWELFTH.—Any notice by the Landlord to the Tenant shall be deemed to be duly given if either delivered personally to the Tenant, delivered to any person in charge of the demised premises, or mailed and deposited in any general or branch Post Office, letter box, or mail chute, enclosed in a post-paid envelope, addressed to the Tenant at the demised premises.

THIRTEENTH.—The Landlord shall not be liable for any failure of water supply or electrical current, sprinkler damage, or failure of sprinkler service, nor for injury or damage to person or property caused by the elements or by other tenants or persons in said building, or resulting from steam, gas, electricity, water, rain or snow, which may leak or flow from any part of said buildings, or from the pipes, appliances or plumbing works of the same, or from the street or sub-surface, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody other than the Landlord, or caused by operations by or for the City in construction of any public or quasi-public work, neither shall the Landlord be liable for any latent defect in the building.

FOURTEENTH.—No diminution or abatement of rent, or other compensation shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the building or to its appliances, nor for any space taken to comply with any law, ordinance or order of a governmental authority. In respect to the various "services," if any, herein expressly or impliedly agreed to be furnished by the Landlord to the Tenant, it is agreed that there shall be no diminution or abatement of the rent, or any other compensation, for interruption or curtailment of such "service" when such interruption or curtailment shall be due to accident, alterations or repairs desirable or necessary to be made or to inability or difficulty in securing supplies or labor for the maintenance of such "service," or to some other cause, not gross negligence on the part of the Landlord. No such interruption or curtailment of any such "service" shall be deemed a constructive eviction. The Landlord shall not be required to furnish, and the Tenant shall not be entitled to receive, any of such "services" during any period wherein the Tenant shall be in default in respect to the payment of rent. Neither shall there be any abatement or diminution of rent because of making of repairs, improvements or decorations to the demised premises after the date above fixed for the commencement of the term, it being understood that rent shall, in any event, commence to run at such date so above fixed.

FIFTEENTH.—The Landlord may prescribe and regulate the placing of safes, machinery, quantities of merchandise and other things. The Landlord may also prescribe and regulate which elevator and entrances shall be used by the Tenant's employee, and for the Tenant's shipping. The Landlord may make such other and further rules and regulations as, in the Landlord's judgment, may from time to time be needful for the safety, care or cleanliness of the building, and for the preservation of good order therein. The Tenant and the employees and agents of the Tenant will observe and conform to all such rules and regulations.

SIXTEENTH.—In the event that an excavation shall be made for building or other purposes upon land adjacent to the demised premises or shall be contemplated to be made, the Tenant shall afford to the person or persons causing or to cause such excavation, license to enter upon the demised premises for the purpose of doing such work as said person or persons shall deem to be necessary to preserve the wall or walls, structure or structures upon the demised premises from injury and to support the same by proper foundations.

SEVENTEENTH.—The vaults, if any, adjacent to the demised premises, were installed under a revocable license. If the demised premises, or any part thereof, consist of "vault space" or if adjacent to the demised premises there be any "vault space" and if such license be revoked or the amount of such "vault space" be curtailed by the exercise of any governmental authority, the Tenant shall not be entitled to any compensation or abatement of rent by reason thereof.

EIGHTEENTH.—That during seven months prior to the expiration of the term hereby granted, applicants shall be admitted at all reasonable hours of the day to view the premises until rented; and the Landlord and the Landlord's agents shall be permitted at any time during the term to visit and examine them at any reasonable hour of the day, and workmen may enter at any time, when authorized by the Landlord or the Landlord's agents, to make or facilitate repairs in any part of the building; and if the said Tenant shall not be personally present to open and permit an entry into said premises, at any time, when for any reason an entry therein shall be necessary or permissible hereunder, the Landlord or the Landlord's agents may forcibly enter the same without rendering the Landlord or such agents liable to any claim or cause of action for damages by reason thereof (if during such entry the Landlord shall accord reasonable care to the Tenant's property) and without in any manner affecting the obligations and covenants of this lease; it is, however, expressly understood that the right and authority hereby reserved, does not impose, nor does the Landlord assume, by reason thereof, any responsibility or liability whatsoever for the care or supervision of said premises, or any of the pipes, fixtures, appliances or appurtenances therein contained or therewith in any manner connected.

NINETEENTH.—The Landlord has made no representations or promises in respect to said building or to the demised premises except those contained herein, and those, if any, contained in some written communication to the Tenant, signed by the Landlord. This instrument may not be changed orally.

TWENTIETH.—If the Tenant shall at any time be in default hereunder, and if the Landlord shall institute an action or summary proceeding against the Tenant based upon such default, then the Tenant will reimburse the Landlord for the expense of attorneys' fees and disbursements thereby incurred by the Landlord, so far as the same are reasonable in amount. Also so long as the Tenant shall be a tenant hereunder the amount of such expenses shall be deemed to be "additional rent" hereunder and shall be due from the Tenant to the Landlord on the first day of the month following the incurring of such respective expenses.

TWENTY-FIRST.—This lease, and every provision hereof, shall bind, apply to and run in favor of the Landlord, and the Tenant, and their respective successors in interest.

THE TENANT FURTHER COVENANTS:

IF A FIRST FLOOR
 TWENTY-SECOND.—If the demised premises or any part thereof consist of a store, or of a first floor, or of any part thereof, the Tenant will keep the sidewalk and curb in front thereof clean at all times and free from snow and ice, and will keep insured in favor of the Landlord, all plate glass therein and furnish the Landlord with policies of insurance covering the same.

INCREASED FIRE INSURANCE RATE
 TWENTY-THIRD.—If by reason of the conduct upon the demised premises of a business not herein permitted, or if by reason of the improper or careless conduct of any business upon or use of the demised premises, the fire insurance rate shall at any time be higher than it otherwise would be, then the Tenant will reimburse the Landlord, as additional rent hereunder, for that part of all fire insurance premiums hereafter paid out by the Landlord which shall have been charged because of the conduct of such business not so permitted, or because of the improper or careless conduct of any business upon or use of the demised premises, and will make such reimbursement upon the first day of the month following such outlay by the Landlord; but this covenant shall not apply to a premium for any period beyond the expiration date of this lease, first above specified. In any action or proceeding wherein the Landlord and Tenant are parties, a schedule or "make up" of rate for the building on the demised premises, purporting to have been issued by New York Fire Insurance Exchange, or other body making fire insurance rates for the demised premises, shall be prima facie evidence of the facts therein stated and of the several items and charges included in the fire insurance rate then applicable to the demised premises.

WATER RENT
 TWENTY-FOURTH.—If a separate water meter be installed for the demised premises, or any part thereof, the Tenant will keep the same in repair and pay the charges made by the municipality or water supply company for or in respect to the consumption of water, as and when bills therefor are rendered. If the demised premises, or any part thereof, be supplied with water through a meter which supplies other premises, the Tenant will pay to the Landlord, as and when bills are rendered therefor, the Tenant's proportionate part of all charges which the municipality or water supply company shall make for all water consumed through said meter, as indicated by said meter. Such proportionate part shall be fixed by apportioning the respective charge according to floor area against all of the rentable floor area in the building (exclusive of the basement) which shall have been occupied during the period of the respective charges, taking into account the period that each part of such area was occupied.

ELECTRIC CURRENT
 TWENTY-FIFTH.—That the Tenant will purchase from the Landlord, if the Landlord shall so desire, all electric current that the Tenant requires at the demised premises, and will pay the Landlord for the same, as the amount of consumption shall be indicated by the meter furnished therefor. The price for said current shall be the same as that charged for consumption similar to that of the Tenant by the company supplying electricity in the same community. Payments shall be due as and when bills shall be rendered. The Tenant shall comply with like rules, regulations and contract provisions as those prescribed by said company for a consumption similar to that of the Tenant.

SPRINKLER SYSTEM

SECURITY

NUISANCE

BROKERS COMMISSIONS

WINDOW CLEANING

VALIDITY

EXECUTION & DELIVERY OF LEASE

EXTERIOR OF PREMISES

PLATE GLASS

WAR EMERGENCY

QUIET POSSESSION

ELEVATOR HEAT

THIRTY-SEVENTH.—The Tenant agrees to indemnify the Landlord against all claims, damages, losses, costs and expenses, including reasonable attorney's fees, which the Landlord may incur as a result of the Tenant's breach of any of the covenants and conditions on his part to be performed hereunder, and the amount thereof shall be paid to the Landlord by the Tenant.

THIRTY-EIGHTH.—This lease is granted and accepted on the especially understood and agreed condition that the Tenant will conduct his business in such a manner, both as regards noise and kindred nuisances, as will in no wise interfere with, annoy, or disturb any other tenants, in the conduct of their several businesses, or the landlord in the management of the building; under penalty of forfeiture of this lease and consequential damages.

THIRTIETH.—The Tenant agrees that it will not require, permit, suffer, nor allow the cleaning of any window, or windows, in the demised premises from the outside (within the meaning of Section 202 of the Labor Law) unless the equipment and safety devices required by law, ordinance, regulation or rule, including, without limitation, Section 202 of the New York Labor Law, are provided and used, and unless the rules, or any supplemental rules of the Industrial Board of the State of New York are fully complied with; and the Tenant hereby agrees to indemnify the Landlord, Owner, Agent, Manager and/or Superintendent, as a result of the Tenant's requiring, permitting, suffering, or allowing any window, or windows in the demised premises to be cleaned from the outside in violation of the requirements of the aforesaid laws, ordinances, regulations and/or rules.

THIRTY-FIRST.—The invalidity or unenforceability of any provision of this lease shall in no way affect the validity or enforceability of any other provision hereof.

THIRTY-SECOND.—In order to avoid delay, this lease has been prepared and submitted to the Tenant for signature with the understanding that it shall not bind the Landlord unless and until it is executed and delivered by the Landlord.

THIRTY-THIRD.—The Tenant will keep clean and polished all metal, trim, marble and stonework which are a part of the exterior of the premises, using such materials and methods as the Landlord may direct, and if the Tenant shall fail to comply with the provisions of this paragraph, the Landlord may cause such work to be done at the expense of the Tenant.

THIRTY-FOURTH.—The Landlord shall replace at the expense of the Tenant any and all broken glass in the skylights, doors and walls in and about the demised premises. The Landlord may insure and keep insured all plate glass in the skylights, doors and walls in the demised premises, for and in the name of the Landlord and bills for the premiums therefor shall be rendered by the Landlord to the Tenant at such times as the Landlord may elect, and shall be due from and payable by the Tenant when rendered, and the amount thereof shall be deemed to be, and shall be paid as, additional rent.

THIRTY-FIFTH.—This lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Landlord is unable to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repairs, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from so doing by reason of governmental preemption in connection with the National Emergency declared by the President of the United States or in connection with any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of supply and demand which have been or are affected by the war.

THE LANDLORD COVENANTS

FIRST.—That if and so long as the Tenant pays the rent and "additional rent" reserved hereby, and performs and observes the covenants and provisions hereof, the Tenant shall quietly enjoy the demised premises, subject, however, to the terms of this lease, and to the mortgages above mentioned and provided for.

SECOND.—Subject to the provisions of Paragraph "Fourth" above the Landlord will furnish the following respective services: (a) If the building shall contain an elevator or elevators, then during all usual business hours, on all days except Sundays and holidays, elevator service; (b) during the same hours on the same days in the cold season in each year, steam heat for the demised premises.

Third: It is mutually agreed by the parties hereto for the benefit of the Genesee Valley Union Trust Company, mortgagee of the aforementioned premises, that the terms of this lease may not be altered or modified without the written consent of the said Genesee Valley Union Trust Company.

In Witness Whereof, the Landlord and Tenant have respectively signed and sealed these presents the day and year first above written.

IN PRESENCE OF:

S. L. & , INC
 By: *Henry P. Lewis* [L. S.]
 President Landlord

LEWIS GENERAL TRADING, INC.
 By: *William Lewis* [L. S.]
 Vice-President Tenant

State of New York,
City of Rochester
County of Monroe

On the 28th day of February 1956, before me personally came Leon E. Lewis, to me known, who, being by me duly sworn, did depose and say that he resides in Rochester, New York; that he is President of S. L. & E. INC., the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Charles Bernard Kenning
CHARLES BERNARD KENNING

Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1957

State of New York,
City of Rochester
County of Monroe

On the 28th day of February 1956, before me personally came Alan E. Lewis, to me known, who, being by me duly sworn, did depose and say that he resides in Rochester, New York; that he is Vice-President of Lewis General Tires, Inc., the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1957

Charles Bernard Kenning
CHARLES BERNARD KENNING

State of New York,
City of
County of

On this day of 19, before me personally came to me known and known to me to be the individual described in and who executed the foregoing instrument, and duly acknowledged that he executed the same.

State of New York,
City of
County of

On this day of 19, before me personally came, subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say, that he resided, at the time of the execution of said instrument, and still resides, in that he is and then was acquainted with, and knew to be the individual described in and who executed the foregoing instrument; and that he, said subscribing witness, was present and saw execute the same; and that he, said witness, thereupon at the same time subscribed his name as witness thereto.

BUILDING 256-264 East Avenue
46 Winthrop Street and
Premises, 470 Property, containing
on the west side of Pittsford St.

of S. L. & E. INC.

S. L. & E. INC.
260 East Avenue
Rochester, N.Y.

Landlord

to

LEWIS GENERAL TIRES, INC.
260 East Avenue
Rochester, N. Y.

Tenant

LEASE

GUARANTY

In consideration of the letting of the premises within mentioned to the Tenant within named, and of the sum of One Dollar, to the undersigned in hand paid by the Landlord within named, the undersigned hereby guarantees to the Landlord and to the heirs, successors and assigns of the Landlord, the payment by the Tenant of the rent, within provided for, and the performance by the Tenant of all of the provisions of the within lease. Notice of all defaults is waived, and consent is hereby given to all extensions of time that any Landlord may grant.

Dated,

19

L. S.

STATE OF
CITY OF
COUNTY OF

On this day of 19, before me personally appeared to me known and known to me to be the individual described in and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

EXHIBIT "D"

COPY OF PAGE "7" OF DEPOSITION TAKEN
ON NOVEMBER 14th, 1974

KAUFMAN, KENNING, TYLE,
PAULEY, BAKER & D'AMANDA
ATTORNEYS AT LAW
45 EXCHANGE STREET
ROCHESTER, NEW YORK

14614

1 fact that Mr. Richard Lewis is here if
2 possible I think that it should be
3 obvious that his deposition should be
4 held today, if possibly, rather than
5 attempting to cause the Plaintiff
6 additional expense and inconvenience
7 of travelling to Fort Lauderdale, Florida
8 where I gather he's now residing.

9 MR. KENNING: Mr. Alan E. Lewis
10 resides in Fort Lauderdale, Florida. I'm
11 going in accordance with the understanding
12 in open court of Mr. Anthony Gettis.
13 I want to complete these first two
14 depositions which are being taken
15 pursuant to a stipulation in open
16 court.

17 MR. WEITZMAN: Go right ahead.

18 MR. KENNING: Are you going to
19 waive the filing and signing?

20 MR. WEITZMAN: The signing will
21 not be waived.

22 MR. KENNING: Any objections
23 going to be waived as to substance or

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF THE STATE
OF NEW YORK

Mar 10, 1975

DONALD E. LEWIS, etc.
Plaintiff,
vs.
S. L. & E., INC., et al.,
Defendants,

LEWIS GENERAL TIRES, INC.,
Plaintiff-Intervenor,
vs.
DONALD E. LEWIS,
Defendant to Intervenor,

CASE NO. CIV. 1973-396
JUDGE BURKE
OBJECTIONS TO DEFENDANTS' AND
PLAINTIFF-INTERVENOR'S
CROSS MOTION WITH
SUPPORTING MATERIALS

NOW comes the plaintiff and defendant-to-intervenor,
DONALD E. LEWIS, by and through his attorney, Sheldon P. Weitzman,
and respectfully requests that this Court deny and overrule
defendants' and plaintiff-intervenor's cross motions to be
heard in the United States District Court of the United States
Courthouse, 100 State Street, Rochester, New York, on March 10,
1975, at 10:00 A.M., or as soon as possible thereafter, for the
compelling reasons set forth in the attached Affidavits, Brief
and evidence which by this reference are fully made a part hereof
and upon all other proceedings previously had herein, and for
such other Relief as the Court may deem proper and reasonable.

Respectfully submitted,

S. P. Weitzman
LAW OFFICES OF SHELDON P. WEITZMAN
Attorney for Plaintiff and Defendant
to Intervenor
502 Lincoln Building
Cleveland, Ohio 44114 861-0026

B R I E F

A. Part A of Defendants' cross motion requests that the Plaintiff's motion for an order striking the answer of separate Defendant, Richard E. Lewis, Sr., and entering judgment by default in favor of Plaintiff and for an assessment of costs against this Defendant be denied. Defendants' request is ill-founded as Plaintiff's previously filed motion clearly indicates.

B. Part B of Defendants' cross motion ostensibly is based on the procedural mechanism of a summary judgment motion contained in Rule 56, Federal Rules of Civil Procedure. And it is elementary that the controlling issue of a summary judgment motion is clearly set forth in Rule 56(C), "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Defendants' motion for summary judgment has no relevance whatsoever to the terms of this Rule. Defendants' state three alleged reasons for the granting of the same. However, as the attached Affidavit of the Plaintiff, Donald E. Lewis, (see attached Exhibit "I"), and as this Court's order dated November 14, 1974, attached to Defendants' motion as Exhibit "A", clearly show, even these three inappropriate grounds have already been determined. Moreover, Defendants' have previously requested that the Plaintiff's stockholder derivative action be dismissed and that the repurchase of his shares are subject to binding arbitration by notice of motion filed October 24, 1973. On March 6, 1974, this Court definitively denied this motion, (See attached Exhibit "II ") and this matter was then settled once and for all.

Because of the blatant and severe inappropriateness of Defendants' ostensible motion for summary judgment; pursuant

to Rule 56 (g), Federal Rules of Civil Procedure, Plaintiff requests this Court, in the exercise of its reasonable discretion, to award Plaintiff the reasonable amount of expenses and attorney's fees for the defense of Defendants' dilatory and bad faith motion for summary judgment.

C. Part C of Defendants' cross motion again is a request for submission of this conflict to binding arbitration. This Court's order dated March 6, 1974, and Plaintiff's above Part B argument clearly disposes of Defendants' request in the negative.

D. Part D of Defendants' cross motion requests that the next deposition herein be taken of the separate defendant, Alan E. Lewis, at his residence in Deerfield Beach, Florida. Although Plaintiff has not yet taken any initiative for the deposition of Alan E. Lewis, Plaintiff agrees to the same on the condition that said deposition be scheduled between March 31, 1975 and April 4, 1975, and requests an order of this Court to the same effect.

E. Part E of Defendants' cross motion requesting Plaintiff transfer his stock is specious. The determination of this stockholder's derivative action is necessarily a condition precedent to all further negotiations between Plaintiff and Defendants and Intervenor. Additionally, transfer of Plaintiff's S. L. & E., Inc. stock subsumes prior arbitration or agreement by the parties. Since submission of this matter to binding arbitration has already been ruled out by the Court (Exhibit "II") a fortiori, transfer of Plaintiff's stock at this time would be entirely premature and unwarranted. Indeed, said transfer would result in an ouster of the Court's jurisdiction which is clearly inappropriate.

For the foregoing reasons, Plaintiff respectfully requests this Court deny and overrule Defendants' cross motions and grant

Plaintiff's prior motion and for such other further and different relief as the Court may deem just and proper, including the reasonable expenses and attorney's fees for this defense and including the formulation of a complete pretrial order.

Respectfully submitted,

LAW OFFICES OF SHELDON P. WEITZMAN
Attorney for Plaintiff and Defendant
to Intervenor
502 Lincoln Building
Cleveland, Ohio 44114 861-0026

S E R V I C E

A true and correct copy of the within Objections to Defendants' and Plaintiff-Intervenor's Cross Motion with Supporting Materials and Brief has been mailed this _____ day of March, 1975 to Charles B. Kenning, Esq., Attorney for Defendant S.L. & E., Inc., Leon E. Lewis, Sr., Richard E. Lewis, Sr., Alan E. Lewis, and Lewis General Tire, Inc., at 1008 Times Square Building, 45 Exchange Street, Rochester, New York 14614.

LAW OFFICES OF SHELDON P. WEITZMAN
Attorney for Plaintiff and Defendant
to Intervenor

S E R V I C E

A true and correct copy of the within Objections to Defendants' and Plaintiff-Intervenor's Cross Motion with Supporting Materials and Brief has been mailed this 5 day of March, 1975 to Wallace F. Ashnault, Attorney for Defendant, Leon E. Lewis, Jr., at 100 Times Square Building, 45 Exchange Street, Rochester, New York 14614.

LAW OFFICES OF
Sheldon P. Weitzman
502 LINCOLN BUILDING
CLEVELAND OHIO 44114
PHONE 861-0026

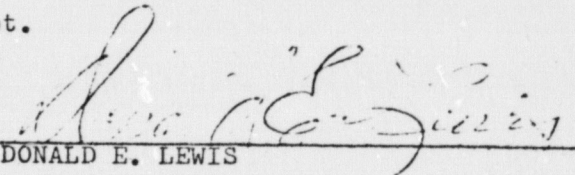
LAW OFFICES OF SHELDON P. WEITZMAN
Attorney for Plaintiff and Defendant
to Intervenor

STATE OF OHIO }
CUYAHOGA COUNTY } SS.

A F F I D A V I T

DONALD E. LEWIS, being first duly sworn according to law, deposes and says, that the following facts are made on personal knowledge:

1. I am an adult resident of the State of Ohio, residing at 18123 Scottsdale Boulevard in Cleveland, Ohio;
 2. I am named plaintiff in a stockholder's derivative action pending in the United States District Court for the Western District of the State of New York, Case No. CIV 1973-396;
 3. That on November 14, 1974, I appeared for the taking of my deposition by Mr. Charles E. Kenning and my deposition was then taken;
 4. That on March 5, 1975, I duly signed the certificate of acceptance attached to my deposition that was taken on November 14, 1974 by Mr. Charles E. Kenning;
 5. That my bases for the bringing of this stockholder's derivative action have been set forth in the Complaint and at my deposition;
 6. That any recovery received for the benefit of S.L. & E., Inc., by my bringing this stockholder's derivative action would greatly influence the buy out value of my stock in S.L. & E., Inc., pursuant to the terms of the stock repurchase agreement.
- Affiant further sayeth not.


DONALD E. LEWIS

SWORN TO BEFORE ME and subscribed in my presence on this
5th day of March, 1975.

Sheldon H. Weitzman

ALFRED H. TANSKI, Notary Public
10012 E. 12th St., Cleveland, Ohio
Notary Public, State of Ohio, No. 10012

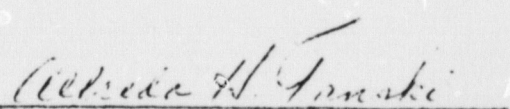

NOTARY

Exhibit "I"

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DONALD E. LEWIS,

Plaintiff

- VS -

CIVIL 1973-396

S. I. & E., INC., LEON E. LEWIS, SR.,
ALAN E. LEWIS, LEON E. LEWIS, JR.,
RICHARD E. LEWIS, SR.,

Defendants

Sheldon P. Weitzman
502 Lincoln Building
Cleveland, Ohio 44114
Attorney for plaintiff

Charles B. Kenning
45 Exchange Street
Rochester, N.Y. 14614
Attorney for certain defendants and for
Lewis General Tires, Inc. seeking to intervene

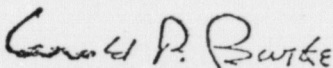
By notice of motion filed October 24, 1973
certain defendants and Lewis General Tires Inc. move
for an order permitting Lewis General Tires Inc. to
intervene. An affidavit of Charles B. Kenning sworn
to December 11, 1973 has been filed in support of the
motion. In that affidavit has been incorporated an
alternative prayer for relief that the plaintiff be
required to submit to binding arbitration in accordance
with paragraph eleven of Stockholders Agreement dated

EXHIBIT II

June 25, 1962, or that this action be dismissed on the ground that the plaintiff is not presently a stockholder of S. L. & E. Inc., and is not a real party in interest and would have no capacity to bring the within action in this court.

The alternative prayer for relief is in all respects denied. In the exercise of discretion Lewis General Tires Inc. is permitted to intervene.

ALL OF THE ABOVE IS SO ORDERED.


HAROLD P. BURKE
United States District Judge

March 6, 1974.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LEWIS GENERAL TIRES, INC.,
Plaintiff-Intervenor,

-vs-

DONALD E. LEWIS,
Defendant.

Civ. 1973-396
Docket #75-7349

DONALD E. LEWIS,
Plaintiff,

-vs-

S. L. & E. INC., a corporation
LEON E. LEWIS, SR.
ALAN E. LEWIS
LEON E. LEWIS, JR.
RICHARD E. LEWIS, SR.
Defendants.

STATE OF NEW YORK)
COUNTY OF MONROE) SS.

CEAL M. STONE, being duly sworn, deposes and says that deponent is not a party to the within actions; is over 18 years of age and resides at Rochester, New York. That on October 1st, 1975 deponent served two copies of the Joint Appendix upon Sheldon P. Weitzman, Esq., attorney for Donald E. Lewis, at 502 Lincoln Bldg., Cleveland, Ohio (44114), the address designated by said attorney for that purpose, by depositing two true copies of same enclosed in a post paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

SWORN TO before me this

1st day of October, 1975.

Marilynne Locke

MARILYNNE LOCKE
Notary Public in the State of New York
MONROE COUNTY, N.Y.
Commission Expires March 30, 1976

KAUFMAN, KENNING, TYLE,
PAULEY, BAKER & D'AMANDA
ATTORNEYS AT LAW
45 EXCHANGE STREET
ROCHESTER, NEW YORK
14614

NOTICE OF ENTRY

Sir:- Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated, Yours, etc.,
Kaufman, Kenning, Tyle, Pauley, Baker & D'Amanda
Attorneys for

Office and Post Office Address
1008 TIMES SQUARE BUILDING
45 Exchange Street
ROCHESTER, NEW YORK 14614

To
Attorney(s) for

NOTICE OF SETTLEMENT

Sir:- Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated, Yours, etc.,
Kaufman, Kenning, Tyle, Pauley, Baker & D'Amanda
Attorneys for

Office and Post Office Address
1008 TIMES SQUARE BUILDING
45 Exchange Street
ROCHESTER, NEW YORK 14614

To
Attorney(s) for

Civ. 1973-396
Docket #75-7349

~~XXXXXXXX~~

Year 19

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LEWIS GENERAL TIRES, INC.,
Plaintiff-Intervenor,

-vs-
DONALD E. LEWIS,
Defendant.

DONALD E. LEWIS,
-vs-
Plaintiff,

S. L. & E. INC., a corporation
LEON E. LEWIS, SR., ALAN E. LEWIS,
LEON E. LEWIS, JR. and RICHARD E. LEWIS,
Defendants.

ORIGINAL AFFIDAVIT OF SERVICE
BY MAIL

Kaufman, Kenning, Tyle, Pauley, Baker & D'Amanda
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To

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Service of a copy of the within

is hereby admitted.

Dated,

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